



STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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March 4, 2022

Agenda ID #20423
Ratesetting

TO PARTIES OF RECORD IN APPLICATION 21-11-011:

This is the proposed decision of Administrative Law Judge Douglas M. Long. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's April 7, 2022 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure. As stated in the assigned commissioner's scoping memo the comment period is reduced to 5 business days.

The Commission may hold a Ratesetting Deliberative Meeting to consider this item in closed session in advance of the Business Meeting at which the item will be heard. In such event, notice of the Ratesetting Deliberative Meeting will appear in the Daily Calendar, which is posted on the Commission's website. If a Ratesetting Deliberative Meeting is scheduled, *ex parte* communications are prohibited pursuant to Rule 8.2(c)(4).

/s/ ANNE E. SIMON

Anne E. Simon

Chief Administrative Law Judge

AES:jnf

Attachment

Decision **PROPOSED DECISION OF ALJ LONG** (Mailed 3/4/2022)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Energy Center
San Francisco LLC (U909H),
Clearway Energy Operating LLC,
Clearway Energy, Inc., and KKR
Thor Bidco, LLC for Authority to Sell
and Transfer Indirect Control of
Energy Center San Francisco LLC to
KKR Thor Bidco, LLC.

Application 21-11-011

**DECISION AUTHORIZING THE SALE AND TRANSFER OF INDIRECT
CONTROL OF ENERGY CENTER SAN FRANCISCO LLC TO
COMMUNITY ENERGY OPERATING COMPANY****Summary**

This decision authorizes the acquisition of Energy Center San Francisco LLC (U-909-H) (Energy Center SF) by Community Energy Operating Company, LLC (originally named KKR Thor Bidco, LLC)¹ as a component of a Membership Interest Purchase Agreement dated October 22, 2021, which would result in Community Energy Operating Company, LLC, indirectly taking control of Energy Center SF's operations and public utility obligations through a transfer of

¹ By *ex parte* communication on January 17, 2022, Applicants informed the assigned Administrative Law Judge that KKR Thor Bidco, LLC would have its name changed to Community Energy Operating Company, LLC. By Ruling Applicants served revised Exhibits 7R and 11R to reflect this and one other change to the transaction. Applicants subsequently filed a Notice of Name Change as directed by the Commission's Docket Office.

the membership interests of Energy Center SF's indirect parent company. This authority is pursuant to Public Utilities Code Sections 851 and 854(a). The proposed transfer of indirect control of Energy Center SF will take place as part of a larger transfer of membership interests of certain subsidiaries of Clearway Energy Operating, LLC from Clearway Energy Operating, LLC to Community Energy Operating Company, LLC.

There are no changes to the operations of the public utility, services provided, or to the rates charged to customers. This transaction is exempt from the California Environmental Quality Act; it has no safety related issues to be addressed because the operations of Energy Center SF will remain unchanged after the transfer of indirect control; there are no impacts on environmental and social justice communities presented in the record, so that approval of this transfer of indirect control of Energy Center SF does not impact achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan; and finally, the Commission's Tribal Land Transfer Policy does not apply to this transaction.

This proceeding is closed.

1. Background

1.1. Factual Background

Energy Center SF was previously known as San Francisco Thermal, Limited Partnership (SF Thermal) and was previously authorized to provide service using market-based rates. (Resolution G-3227, dated November 19, 1997.) Energy Center SF provides steam heating to approximately 180 commercial customers in downtown San Francisco California.² Energy Center SF generates

² [Clearway Community Energy San Francisco | Clearway Community Energy](#)

500kW of electricity with boilers using natural gas with #2 diesel as back up fuel. In Decision (D.) 00-06-055, the Commission authorized the transfer of ownership and control of SF Thermal, whereby SF Thermal merged into NRG Energy Center and continued to operate and serve with market-based rates. In D.18-07-015, the Commission approved a transfer of indirect control of NRG Energy Center to Clearway Energy, Inc., and at that time NRG Energy Center was renamed Energy Center San Francisco, LLC.

The transfer of the California jurisdictional utility Energy Center SF is only one small part of the bigger transaction, valued at \$1.9 billion, but there is no separate valuation or price defined for Energy Center SF. (Application at 14.)

On January 17, 2022, applicants informed the Commission of two changes to the transaction: 1) company's name change as noted above, and 2) a modification to the transaction that an additional new entity had been added into the transaction, *KKR Thor Intermediateco, LLC*, as the direct parent of the previously disclosed *KKR Thor Bidco, LLC*, whose name was also changed to *Community Energy Operating Company, LLC*. As directed by Ruling, Applicants served two revised Exhibits, 7R and 11R, to reflect these changes.

1.2. Procedural Background

This application, filed on November 15, 2021, was uncontested. A prehearing conference was held on December 28, 2021, and a Scoping Memo and Ruling was issued on January 26, 2022, and the proceeding was submitted on February 2, 2022, after service of revised Exhibits 7R and 11R on January 21, 2022, as directed by Ruling on January 18, 2022. The record is composed of all filed documents and the testimony served by Applicants, as admitted into the record by Ruling dated January 31, 2022.

2. Jurisdiction and Issues to be Resolved

Energy Center SF is a heat corporation as defined Public Utilities (Pub. Util.) Code Section (§) 224 and a public utility per § 216 subject to the jurisdiction of this Commission. Any transfer of control of a public utility doing business in California must be approved in advance by the Commission Pub. Util. Code §§ 851 and 854. The Commission must also address whether and environmental review is required; whether the transaction could have safety issues, and whether the Commission needs to address any social justice issues. We also address the relevance of the Commission's recently adopted Tribal Land Transfer Policy in Resolution E-5076.

2.1. Standard of Review

Commission decisions over the years have laid out different approaches to consider when making the determination as to whether a transaction will be adverse to the public interest. We also observe that in certain past instances, questions have sometimes arisen as to whether, in the context of § 854(a), the "adverse to public interest" standard is different from the "in the public interest" standard.³ In D.07-03-047, however, in determining whether a proposed transfer of control is not adverse to the public interest, the Commission was not applying a separate standard, but rather, "the same standard as demonstrating that the transaction is affirmatively in the public interest under § 854(a)."⁴

In this instance there are no facts in the record that show an adverse effect on the public interest by allowing the transaction.

³ See for example, D.07-03-047 (Order Modifying D.06-11-019 and Denying Rehearing of Decision as Modified).

⁴ See D.07-03-047 at 5.

2.1.1. Public Utilities Code § 851

Pub. Util. Code § 851⁵ requires that any transfer of control of a jurisdictional utility must be approved by the Commission:

A public utility ... shall not sell, lease, assign, mortgage, or otherwise dispose of, or encumber the whole or any part of its ... plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, or by any means whatsoever, directly or indirectly, merge or consolidate its ... plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having either secured an order from the commission authorizing it to do so for qualified transactions valued above five million dollars (\$5,000,000) ...

2.1.2. Pub. Util. Code § 854

Pub. Util. Code § 854(a) requires any “person or corporation” to obtain the Commission's approval before acquiring direct or indirect control of a public utility.⁶ The purpose of § 854(a) is to allow the Commission to review and evaluate a proposed transaction and to impose any conditions that the public interest requires before a transfer of public utility authority is consummated, and therefore the primary issue in this application is whether the proposed transfer is contrary to the public interest.

Pub. Util. Code § 854(b) and (c) apply only to transactions involving utilities with annual gross California revenues of more than \$500,000,000.⁷ Energy Center SF does not fall within this category and no further analysis under those sections is needed.

⁵ [Law section \(ca.gov\).](#)

⁶ [Law section \(ca.gov\).](#)

⁷ See Advice Letter No. 43-STM, which shows Energy Center SF's annual revenue forecast. The Commission may take notice in its decisions of other regulatory filings made by the utility applicant.

Pub. Util. Code § 854(d) applies only to transactions involving utilities with annual gross California revenues of more than \$400,000,000. Energy Center SF does not fall within this category and no further analysis under those sections is needed.

We find that this transaction should be approved pursuant to Pub. Util. Code §§ 851 and 854(a).

2.2. California Environmental Quality Act

Commission Rules of Practice and Procedure's (Rules) Rule 2.4⁸ lays out the requirements for applications that are subject to the California Environmental Quality Act (CEQA). This transaction involves only a change of indirect control of Energy Center SF. Applicants assert that the transaction will not result in any change in the operation of Energy Center SF's steam service facilities or in any additional construction. The Commission has previously ruled that a transfer of indirect control of a utility was exempt from any CEQA-related review pursuant to § 15061(b)(3) of the CEQA Guidelines.⁹

We find this transaction to exempt from CEQA review.

2.3. Environmental and Social Justice Action Plan

All customers of Energy Center SF are relatively large commercial customers, the transaction does not change rates, and therefore there are likely no impacts on environmental and social justice communities, so that approval of this transfer of indirect control of Energy Center SF likely does not impact

⁸ [rules-of-practice-and-procedure-may-2021.pdf \(ca.gov\)](#)

⁹ "The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." (14 Cal. Code of Regs. § 15061(b)(3).)

achievement of any of the nine goals of the Commission's Environmental and Social Justice Action Plan.¹⁰

2.4. Safety Considerations

Applicants assert that as with the prior transfer of indirect control of Energy Center SF there will be no changes in operations that would give rise to any safety concerns.

2.5. The Commission's Tribal Land Transfer Policy

The Commission's Tribal Land Transfer Policy (TLTP)¹¹ provides non-mandatory guidance on complying with the TLTP to all jurisdictional public utilities requesting permission to dispose of real property under Pub. Util. Code § 851. The Commission implemented its TLTP in Resolution E5076, adopted on January 14, 2021. These Guidelines are, however, only mandatory for all electrical corporations (Pub. Util. Code § 218), most gas corporations (Pub. Util. Code § 222) and most water corporations (Pub. Util. Code, § 241). Energy Center SF is instead a heat corporation as defined by Pub. Util. Code, § 224¹² and is not included in the adopted TLTP. Consideration of the TLTP is therefore not mandatory in this instance.

The TLTP does not apply to this transaction because it does not constitute a "disposal" of assets. If we consider the intent of the TLTP to this transaction, we find that a transfer of control of an entire utility to a new ownership of its ongoing, uninterrupted, and unchanged operations, does not meet the reasonable intention of the TLTP. No assets are being separated from the utility; no assets are being retired from service; and no assets are being used differently

¹⁰ [Microsoft Word - Env and Social Justice ActionPlan_ 2019-02-21.docx \(ca.gov\)](#)

¹¹ [361400079.PDF \(ca.gov\)](#).

¹² [Law section \(ca.gov\)](#).

after the transaction. Energy Center SF as a whole continues to serve its existing customers. Therefore, we find there are no assets being disposed of and thereby eligible for any tribal exercise of a right of first offer. This transaction is exempt from the TLTP.

3. Conclusion

The application complies with all statutory requirements necessary for the Commission to consider granting the relief sought. This is an uncontested matter that is not adverse to the public interest and is therefore approved, subject to completion of the larger transaction between Clearway Energy Operating LLC and Community Energy Operating Company, LLC.

4. Reduction of Comment Period

Pursuant to Rule 14.6(b), all parties stipulated to reduce the 30 day public review and comment period required by Section 311 of the Pub. Util. Code to (5) five days. _____ filed comments on _____.

5. Assignment of Proceeding

Clifford Rechtschaffen is the assigned Commissioner and Douglas M. Long is the assigned Administrative Law Judge.

Findings of Fact

1. Energy Center SF is a public utility subject to the jurisdiction of this Commission and provides services to its customers at market-based prices.
2. Energy Center SF is the only California jurisdictional utility involved in the transfer of membership interests of certain subsidiaries of Clearway Energy Operating LLC from Clearway Energy Operating LLC to Community Energy Operating Company, LLC. There is no separate valuation in the transaction for Energy Center SF.
3. The proposed transfer of indirect control over Energy Center SF will not change the operations or rates of Energy Center SF.

4. Approval of the proposed transfer of indirect control over Energy Center SF will not change rates charged to customers.

5. No evidence was submitted to the record that would indicate that this transaction is adverse to the public interest.

The proposed transfer of indirect control over Energy Center SF will not result in any new construction.

6. Energy Center SF has annual revenues of less than \$500,000,000 as shown in its recent Advice Letter filing No. 43-STM.

7. This proceeding was submitted on January 31, 2022 and includes all filed documents and served testimony as admitted by Ruling.

Conclusions of Law

1. The application complies with Pub. Util. Code § 851.

2. Pub. Util. Code § 854(a) is satisfied by determining the transfer of indirect control is not adverse to the public interest.

3. Pub. Util. Code § 854(b), (c), and (d) do not apply to this transaction.

4. The transaction is exempt from CEQA review pursuant to § 15061(b)(3) of the CEQA Guidelines.

5. The transaction is exempt from the Commission's TLTP.

6. The transfer of indirect control over Energy Center San Francisco LLC (U-909-H) to Community Energy Operating Company, LLC should be approved.

7. A.21-11-011 should be closed.

O R D E R

IT IS ORDERED that:

1. The transfer of indirect control of Energy Center San Francisco LLC (U-909-H) to Community Energy Operating Company, LLC is approved subject to

the completion of the larger transaction for the transfer of membership interests of certain subsidiaries of Clearway Energy Operating LLC from Clearway Energy Operating LLC to Community Energy Operating Company, LLC.

2. Energy Center San Francisco LLC (Energy Center SF) must file a Tier 1 Advice Letter with the Energy Division to notify the Commission of the completion of the transaction for the transfer of membership interests of certain subsidiaries of Clearway Energy Operating LLC, including Energy Center SF, from Clearway Energy Operating LLC to Community Energy Operating Company, LLC. This advice letter must be filed within 10 working days of the completion of the transaction. Energy Center SF must include in the Advice Letter a comprehensive organization chart of the final ownership structure and clearly delineate the relationship of Energy Center SF within that organization. The organization chart must show the full and complete legal names of all entities.

3. Application 21-11-011 is closed.

This order is effective today.

Dated _____, at San Francisco, California.